



PUBLIC NOTICE

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DOMESTIC SECTION 214 AUTHORIZATION GRANTED

Domestic Section 214 Application Filed for the Acquisition of Assets of IXC Holdings, Inc. by TelePacific Managed Services

WC Docket No. 11-85

Pursuant to section 214 of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 214, and sections 0.91, 0.291, and 63.03 of the Federal Communication Commission's (Commission) rules, 47 C.F.R. §§ 0.91, 0.291, 63.03, the Wireline Competition Bureau (Bureau) approves the application of IXC Holdings, Inc. (IXCH) and TelePacific Managed Services (TMS) (together, Applicants) to transfer assets from IXCH to TMS.¹ The Bureau has determined that grant of this application serves the public interest,² and accordingly the application is granted pursuant to the Commission's procedures for domestic section 214 transfer of control applications.³

On May 19, 2011, the Commission released a public notice accepting the application for streamlined processing.⁴ On June 1, 2011, the Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security (collectively, the Executive Branch Agencies), filed a letter requesting that the Commission defer action on this application while they reviewed potential national security, law enforcement, and public safety issues. In response to the request, the Wireline Competition Bureau removed the application from streamlined review.⁵ On July 28, 2011, the Executive Branch Agencies submitted a Petition to Adopt Conditions to Authorizations and Licenses (Petition).⁶ In the Petition, the Executive Branch Agencies advise the Commission that they

¹ Joint Application of IXC Holdings, Inc. and TelePacific Managed Services, WC Docket No. 11-85 (filed May 10, 2011) (Application).

² *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, 17 FCC Rcd 5517, 5540, para. 45 (2002).

³ 47 C.F.R. § 63.03.

⁴ *Domestic Section 214 Application Filed for the Acquisition of Assets of IXC Holdings, Inc. by TelePacific Managed Services*, WC Docket No. 11-85, Public Notice, DA 11-927 (rel. May 19, 2011).

⁵ *Notice of Removal of Domestic Section 214 Application from Streamlined Treatment*, WC Docket No. 11-85, Public Notice, DA 11-1035 (rel. June 10, 2011).

⁶ Petition to Adopt Conditions to Authorizations and Licenses, WC Docket No. 11-85 and IB File No. ITC-ASG-20110509-00130 (filed July 28, 2011).

have no objection to the Commission granting its consent in this proceeding, provided the Commission conditions the grant on the agreement of U.S. TelePacific Holdings Corp., U.S. TelePacific Corp., and TMS to abide by the commitments and undertakings set forth in the July 18, 2011 Letter of Assurances (Letter of Assurances). The Executive Branch Agencies filed the Letter of Assurances in WC Docket No. 11-85 on July 28, 2011.⁷

Straitshot RC, LLC and Straitshot Communications, Inc. (together, Straitshot), competitors of IXCH, filed comments against the proposed transaction.⁸ Straitshot states that it is the plaintiff in litigation against IXCH in United States District Court for the Western District of Washington (District Court) in which it alleges that IXCH and the affiliated company from which IXCH acquired assets in 2010, Telekenex, Inc. (Telekenex), stole trade secrets and confidential business information. Straitshot claims that IXCH/Telekenex did this in order to coerce customers to leave Straitshot and enter into long term contracts that favored IXCH/Telekenex.⁹ It states that the District Court allowed it to add IXCH as a defendant in the litigation, and that the proposed transfer to TMS jeopardizes any potential relief Straitshot may secure from the District Court.¹⁰ Straitshot further argues that IXCH/Telekenex made ongoing misrepresentations to customers, and that because TMS is acquiring IXCH's employees and retaining existing IXCH management, TMS has not demonstrated that customer mistreatment and anti-competitive business practices will cease after the transaction is consummated.¹¹ Straitshot asserts that the Bureau should reject the application or condition a grant on TMS assuming financial responsibility for paying Straitshot any relief awarded by the District Court and that TMS should address and remedy ongoing mistreatment of customers.¹²

The Applicants filed reply comments stating that Straitshot's ongoing dispute is unrelated to the proposed transaction.¹³ They argue that the dispute involves claims about commercial misconduct that allegedly occurred with Telekenex, which is not a party to the application, and which are already the subject of the District Court proceeding.¹⁴ Applicants further assert that Straitshot's claim that IXCH will fail to comply with any legal or financial obligations arising from the litigation is speculative and that TMS's acquisition of IXCH assets will not impact the litigation. They state that IXCH will receive

⁷ Petition Attach., Letter to Lisa O. Monaco, U.S. Department of Justice, and David Heyman, U.S. Department of Homeland Security, from Richard A. Jalkut, U.S. TelePacific Holdings Corp. et al., WC Docket No. 11-85 and IB File No. ITC-ASG-20110509-00130 (filed July 28, 2011).

⁸ Comments of Straitshot RC, LLC and Straitshot Communications, Inc., WC Docket No. 11-85 (filed June 2, 2011) (Comments).

⁹ *Id.* at 2-3, 8-9, 11-12 (citing *Straitshot RC, LLC v. Telekenex, Inc., et al.*, Case No. 2:10-CV00268-TSZ (W.D. Wash 2010)).

¹⁰ Comments at 5, 9-10, 12.

¹¹ *Id.* at 7-14.

¹² *Id.* at 17-18.

¹³ Joint Reply Comments of TelePacific Managed Services and IXC Holdings, Inc., WC Docket No. 11-85 at 3-7 (filed June 9, 2011) (Reply).

¹⁴ *Id.*

consideration for its assets from TMS and will be in at least as good a position as it is currently to pay any potential judgment.¹⁵ Applicants state that the transaction is in the public interest because TMS is an established telecommunications provider, has a larger and more robust network than IXCH, and will provide high quality service to customers.¹⁶

After careful consideration of the record in this proceeding, we conclude that the concerns raised by Straitshot are not sufficient to persuade us to deny the transaction or to impose conditions on the terms of the transfer. We find that the transaction is likely to result in certain public interest benefits, including the continued provision of telecommunications service to IXCH's customers by TMS, a subsidiary of U.S. TelePacific Corp., which is an established competitive carrier in multiple states.¹⁷ We agree with the Applicants that Straitshot's claims are not merger-specific,¹⁸ are based on prior conduct by Telekenex, and are more appropriately resolved in the pending litigation.¹⁹ Consistent with past practice, the pendency of legal proceedings should not cause us to delay our action on the transfer application.²⁰ In addition, to the extent that the allegations primarily involve Telekenex and IXCH,²¹ they do not implicate the fitness of TMS to provide service.²² Applicants state that TMS has the technical, managerial, and financial resources to ensure that customers receive service under the same rates, terms, and conditions as they currently receive service, and that it has an experienced management team that will oversee the business after consummation, including the IXCH employees it retains.²³ We disagree

¹⁵ *Id.* at 4-5, 13.

¹⁶ *Id.* at 6, 8-11.

¹⁷ Application at 6-7.

¹⁸ See *Verizon Communications, Inc. and America Movil, S.A. de C.V., Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc.*, WT Docket No. 07-43, Memorandum Opinion and Order, 22 FCC Rcd 6195, 6206-07, para. 25 (2007) (rejecting assertions that a transfer of control should be denied or conditioned based on non merger-specific issues and finding that applicants were subject to existing requirements).

¹⁹ See *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18529, para. 191 (2005) (noting that a number of issues raised by commenters were the subject of other pending proceedings).

²⁰ See *Applications of AT&T Inc. and Celco Partnership d/b/a Verizon for Consent to Assign and Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8762-63, para. 139 (2010) (citing Margaret Jackson and Ray Webb, File No. BTCCT-2011024AAU, 18 FCC Rcd 26403, 26404-05, para. 6 (2003) (declining to defer action on transfer applications pending state court litigation of a contractual dispute); Northwest Broadcasting, Inc. and Western Pacific, Inc., File No. BAL-951011EA, Memorandum Opinion and Order, 1997 WL 60920, para. 14 (1997)).

²¹ Comments at 3.

²² See *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, 25 FCC Rcd 5972, 5989, n.121 (2010) (stating that, in the absence of any basis for concluding that the transferee is likely to engage in such behavior post-merger, allegations regarding past discriminatory conduct by the transferor are more appropriately addressed in enforcement proceedings).

with Straitshot's argument that TMS, because it is acquiring IXCH's assets and employees, will continue the misconduct that is the subject of the District Court proceeding. The Commission does not make decisions on the character or fitness of an applicant based on allegations of misconduct where those allegations are in the process of being adjudicated by another agency or court.²⁴ We further find that Straitshot's claim that the Applicants will fail to comply with any legal or financial obligations after consummation is speculative and not supported by evidence in the record. We are thus satisfied that the proposed transaction is in the public interest and should be granted.

The Bureau finds, upon consideration of the record, that grant of the application, subject to U.S. TelePacific Holdings Corp., U.S. TelePacific Corp., and TMS abiding by the commitments and undertakings contained in the Letter of Assurances, will serve the public interest, convenience, and necessity. Upon consummation of the transaction, the resulting entity will have a market share in the U.S. interstate interexchange market of less than 10 percent and will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier in the U.S. that is not a party to the transaction. In addition, no party to the transaction is dominant with respect to any domestic service.²⁵

Consistent with Commission precedent, the Bureau also accords the appropriate level of deference to the Executive Branch Agencies' expertise on national security and law enforcement issues.²⁶ Therefore, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, the Bureau hereby grants the application discussed in this Public Notice.

²³ Application at 5-6; Reply at 7. Straitshot states that TelePacific failed to disclose the District Court litigation to the California Public Utilities Commission (PUC) in its proceeding addressing the proposed transaction and argues that this demonstrates that TMS is at risk of engaging in misrepresentations. Comments at 14-16. Applicants state that TelePacific has addressed this issue with the California PUC and asserts that the omission was not inconsistent with state rules. Reply at 9. This disclosure issue is appropriately addressed in the state proceeding.

²⁴ See, e.g., *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket no. 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522, 221548-49, para. 49 (2004) ("The Commission's long-held position [is] that there 'must be an ultimate adjudication before an appropriate trier of fact, either by a government agency or court, before we will consider the activity in our character determinations.'") (citing *Policy Regarding Character Qualifications in Broadcast Licensing*, Gen Docket No. 81-500, Docket No. 78-108, Report, Order and Policy Statement, 102 FCC2d 1179, 1205, n.60 (1986) ("We will not take cognizance of [relevant] non-FCC misconduct...unless it is adjudicated.")).

²⁵ 47 C.F.R. 63.03(b)(2)(i).

²⁶ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. See *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170-72, paras. 178-82 (1997); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) (*Foreign Participation Order*), Order on Reconsideration, 15 FCC Rcd 18158 (2000). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. See *Foreign Participation Order*, 12 FCC Rcd at 23919-21, paras. 61-66.

Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Jodie May, (202) 418-0913, Competition Policy Division, Wireline Competition Bureau.

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